

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>AT&T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p style="text-align:right">Complainant,</p> <p style="text-align:center">v.</p> <p>IOWA TELECOMMUNICATIONS ASSOCIATION, et al.,</p> <p style="text-align:right">Respondents.</p>	<p style="text-align:right">DOCKET NOS. FCU-02-14 RMU-02-8</p>
--	--

**ORDER GRANTING MOTION TO DISMISS, DENYING RULE MAKING PETITION,
AND CLOSING DOCKET**

(Issued February 13, 2004)

On July 12, 2002, AT&T Communications of the Midwest, Inc. (AT&T), filed with the Utilities Board (Board) a complaint and a petition for rule making. AT&T complained that the intrastate access charges of certain independent local exchange carriers (the Independents) were not just, reasonable, and nondiscriminatory and therefore unlawful. AT&T alleged the Board has jurisdiction of the complaint pursuant to Iowa Code §§ 476.3 and 476.11 and of the petition for rule making pursuant to Iowa Code § 17A.7. AT&T subsequently filed an amendment to its complaint and, on August 2, 2002, the Board docketed the complaint and petition and established a preliminary schedule.

On August 20, 2002, Interstate 35 Telephone Company and Southwest Telephone Exchange Inc. (collectively "Interstate") filed a petition for a declaratory order asking that the Board rule that the exemption from rate regulation in Iowa Code § 476.1 is not impaired or adversely affected by § 476.11. That petition was identified as Docket No. DRU-02-4 and, on September 19, 2002, the Board issued an order suspending this docket pending its action on the petition for declaratory ruling.

On October 18, 2002, the Board issued an order in Docket No. DRU-02-4, in which it concluded that the Board does not have jurisdiction over the access charges of nonrate-regulated telephone companies as defined in § 476.1. AT&T filed a petition for judicial review of the Board's declaratory order on November 18, 2002.¹

On December 10, 2002, the Iowa Telecommunications Association filed a motion to dismiss this proceeding on the basis of the Board's declaratory ruling. On December 17, 2002, AT&T filed a resistance to the motion to dismiss, arguing that the Board's declaratory ruling was in error and the motion to dismiss should, therefore, be denied.

The Board did not rule on the motion to dismiss because of the pending judicial review proceeding. However, that proceeding was dismissed on January 22, 2003, and the motion to dismiss this docket is therefore ready to be considered.

AT&T filed its complaint and petition for rule making pursuant to Iowa Code §§ 476.3 and 476.11. In its declaratory order, the Board concluded that § 476.1 provides an unambiguous exemption to the nonrate-regulated telephone utilities from

¹ AT&T Communications of the Midwest, Inc., v. Iowa Utilities Board, Polk County District Court No. AA 4485.

all of the rate regulation provisions of chapter 476, specifically including §§ 476.3 and 467.11. One member of the Board, in a concurring opinion, recognized the potential ambiguity of the statutes and invited State lawmakers to lend clarity to the statute, but there has been no action in response to that invitation.

Based upon the Board's decision in the declaratory order, the Board does not have jurisdiction to consider AT&T's complaint or to adopt the rules AT&T has proposed. Accordingly, the motion to dismiss will be granted.

IT IS THEREFORE ORDERED:

1. The "Motion To Dismiss" filed on December 10, 2002, by the Iowa Telecommunications Association is granted.
2. The petition for rule making filed by AT&T Communications of the Midwest, Inc., on July 12, 2002, and identified as Docket No. RMU-02-8, is denied.
3. Docket No. FCU-02-14 is closed.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 13th day of February, 2004.